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March 4, 2024

VIA E-Mail

Hon. Freda L. Wolfson, U.S.D.J. (ret.)
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, New Jersey 07068

Re: *Johnson & Johnson Health Care Systems, Inc. v. Save On SP, LLC*
No. 2:22-cv-02632 (JKS) (CLW)

Dear Judge Wolfson:

On behalf of Defendant Save On SP LLC (“**SaveOn**”), we write in response to Johnson & Johnson Health Care Systems, Inc.’s (with its affiliates, “**J&J**”) February 28, 2024 opposition to SaveOn’s February 16, 2024 motion to compel J&J to run the CAP Terms¹ over the custodial files of Quinton Kinne, Daphne Longbothum, William Shontz, John Hoffman, L.D. Platt, Alison Bar-klage (collectively, the “CAP Custodians”), Scott White, Blasine Penkowski, and Karen Lade.

¹ The CAP Terms are “adjustment program,” “CAPa,” and “CAPm.” J&J agreed to run that term for its original custodians from April 1, 2016 through July 1, 2022. Ex. 1 (Sept. 29, 2023 Email).

J&J does not dispute that the CAP Terms are relevant. Nor could it. Your Honor and Judge Waldor both recognized the CAP Program’s relevance. *See, e.g.*, Dkt. 192 at 25 (reflecting Judge Waldor’s intent for additional discovery regarding the CAP Program); Jan. 24, 2024 Hr’g at 108:21-109:6 (Your Honor indicating that documents related to the CAP Program are relevant).

J&J also does not dispute that each of the nine custodians at issue was heavily involved with the CAP Program, as Your Honor recognized. *See* Dkt. 192 at 26 (regarding the CAP Custodians), 28 (agreeing “White was involved in high level discussions about the CarePath program,” including SaveOn’s impact on the CarePath program and J&J’s response, which necessarily includes the CAP Program), 29 (finding “documents show [Penkowski’s] role in responding to ‘accumulators,’ a term that Plaintiff used internally to refer to SaveOnSP’s programs” and “Lade was involved early on in Plaintiff’s formulation of a response to maximizer and accumulator programs,” so each are appropriate custodians); *see also* Dkt. 173 at 2 (directing parties to negotiate search terms for the CAP Custodians regarding the CAP Program).

J&J also does not dispute that the CAP Terms are targeted to identify documents regarding the CAP Program—and it does not argue that reviewing the documents identified by these terms would be unduly burdensome. *See generally*, Jan. 24, 2024 Hr’g at 108:13-14 (Your Honor asking J&J regarding proposed search terms including the unlimited CAP Terms at issue: “Why wouldn’t [J&J] run them for [the CAP Custodians]?”). To the contrary, J&J fails to provide the hit counts that it would need to substantiate its burden obligation. *Compare* Ex. 2 (Jan 29, 2024 Ltr.) (requesting hit counts for each search term J&J objects to run), *with* Ex. 3 (Feb. 15, 2024 Ltr.).

J&J further does not dispute that running the CAP Terms limited by a “SaveOn” modifier, as it proposes, would be completely subsumed by J&J’s agreement to separately run variations of

that “SaveOn” modifier as a stand-alone term. *See* Opp. at 5.² While it claims to have produced “scores” of documents hitting on its proposed limited CAP Terms, *id.*, this is highly misleading: It has produced 31,959 documents to date, of which only **1,696** hit the **limited** CAP Terms (run through November 7, 2023) but a whopping **9,730** hit the **unlimited** CAP Terms (run only through July 1, 2022)—including numerous relevant documents that the limited terms would have missed. *See, e.g.*, Ex. 4 (JJHCS_00001207) ([REDACTED]

[REDACTED]);

Ex. 6 (JJHCS_00182969) ([REDACTED]

[REDACTED]); Ex. 7 (JJHCS_00142268) ([REDACTED]

[REDACTED].³ The disproportionate hit counts to date confirm that if J&J runs the **unlimited** CAP Terms over the documents that it has yet to produce, those terms would identify a similar a trove of relevant documents—documents that would not be identified by the **limited** CAP Terms.

Otherwise, J&J relies on procedural arguments, all of which fail.

First, J&J tries to paint this motion as duplicative of SaveOn’s February 7, 2024 motion, which also involved the CAP Terms. It is not. The February 7 motion seeks to compel J&J to comply with the November 7, 2023 Order by conducting a full refresh of its document production though that date—which includes running the CAP Terms (to which it already agreed) over J&J’s

² J&J suggests that it agreed to run this “SaveOn” term as a “result of the parties’ negotiations,” Opp. at 5, but in fact Your Honor **told** J&J that this term would be relevant to the newly-ordered custodians, Hr’g Tr. at 110:20-23 (“[T]he terms that would be relevant to them would be referring to SaveON, referring to ESI.”).

³ For the CAP Custodians, J&J has produced a total of 99 documents from Alison Barklage that hit on the limited CAP Terms, 24 from Hoffman, 61 from Kinne, 35 from Longbothum, 89 from Platt, and 48 from Shontz.

original custodians, whom it had agreed to add as custodians prior to the October 30, 2023 conference before Judge Waldor. This motion, in contrast, seeks to compel J&J to run the CAP Terms over its *new* custodians—the CAP Custodians that Judge Waldor compelled J&J to add in her November 7, 2023 Order and those custodians that Your Honor compelled it to add in the February 6, 2024 Order. While J&J should run the CAP Terms for all its custodians, it is especially important that it do so for these new custodians, whom Your Honor found relevant for their involvement in the CAP Program. Dkt. 192 at 26-29.

Second, J&J asserts that SaveOn moves for clarification. It does not. In the February 6, 2024 Order—which J&J does not discuss—Your Honor ordered the parties to negotiate appropriate search terms regarding the CAP Program for the CAP Custodians, Dkt. 192 at 26, and appropriate search terms for White, Penkowski, and Lade, *id.* at 28-29. The parties met and conferred, J&J refused to run the unlimited CAP Terms for any of these custodians, and SaveOn sought relief from Your Honor. There is nothing to clarify.

Third, J&J asserts that the November 7 Order holds that it may run the CAP Terms with a SaveOn limiter in every circumstance. Not so. The portion of that order that J&J cites concerned only SaveOn’s motion (Dkt. 166) to compel J&J to run CAP Terms past the July 1, 2022 discovery cutoff. Dkt. 173 at 2-3. In its February 7 motion, SaveOn explained why that ruling does not allow J&J to run limited CAP Terms for its original custodians in refreshing its document production. Feb. 7, 2024 Mot. at 1-3. Even if that ruling did apply to J&J’s refresh production (it does not), it explicitly does not apply to J&J’s production from its new custodians, for whom Judge Waldor and Your Honor specifically directed the parties to negotiate search terms without any limits on what those terms could be. Dkt. 173 at 2; Dkt. 192 at 26-29; *see also* Dkt. 192 at 26 (“Judge

Waldor’s November Order did not order specific custodian search terms in the hope that the parties would come to a compromise.”).

Finally, J&J accuses SaveOn of using this motion to prolong discovery. The record shows otherwise. J&J does not dispute that it failed to disclose the CAP Program at the start of discovery, despite launching that program months before filing this lawsuit. Dkt. 192 (“SaveOn [did not] learn about the existence of the CAP program until June 2023 (it apparently existed since before J&J filed this case).”). Once SaveOn learned of the program, it promptly began seeking the custodians at issue. *See* Ex. 8 (July. 18, 2023 Ltr); *see also* Ex. 9 (Aug. 28, 2023 Ltr.). J&J ultimately refused to add a single custodian regarding the CAP Program. SaveOn then promptly sought the Court’s intervention, Dkt. 165, and, after the Court ordered J&J to add the CAP Custodians, it promptly proposed search terms. Ex. 2 (Jan. 29, 2024 Ltr.). SaveOn brings this motion because it needs relevant documents regarding the CAP Program that J&J continues to withhold.

SaveOn appreciates Your Honor’s attention to this matter.

Respectfully submitted,

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Attorneys for Defendant Save On SP, LLC

Exhibit 1

From: Long, Julia (x2878) <jlong@pbwt.com>
Sent: Friday, September 29, 2023 6:23:35 PM
To: Elizabeth Snow <esnow@selendygay.com>; Mangi, Adeel A. (x2563) <aamangi@pbwt.com>; Sandick, Harry (x2723) <hsandick@pbwt.com>; LoBiondo, George (x2008) <globiondo@pbwt.com>; Arrow, Sara (x2031) <sarrow@pbwt.com>; ~jgreenbaum@sillscummis.com <jgreenbaum@sillscummis.com>; ~klieb@sillscummis.com <klieb@sillscummis.com>
Cc: Andrew Dunlap <adunlap@selendygay.com>; Meredith Nelson <mnelson@selendygay.com>; David Elsberg <delsberg@selendygay.com>; Wohlforth, E. Evans <EWohlforth@rc.com>
Subject: RE: JJHCS v. SaveOnSP (Case No. 2:22-cv-02632-ES-CLW)

Counsel:

In an effort to reach compromise and reduce the number of disputes before Judge Waldor at our October 30 conference, JJHCS agrees to run the terms "CAPa," "CAPm" and "adjustment program" for the agreed-upon relevant time period, April 1, 2016 to July 1, 2022.

We hope that this will resolve the dispute. We do not think a demand through to the present by SaveOnSP is appropriate or feasible. As JJHCS has no direct knowledge of SaveOnSP's conduct at issue, JJHCS's documents primarily relate to its awareness and response to SaveOnSP, and this demand amounts to a wholesale update of the production. We note SaveOnSP has rejected even several discrete updates, let alone a wholesale update, of its own production.

Please let us know if our proposed production resolves this dispute.

JJHCS will respond separately to your joint letter on SaveOnSP's interrogatories next week.

Best,
Julia

Julia Long
She | Her | Hers
Associate

Patterson Belknap Webb & Tyler LLP
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New York, NY 10036

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jlong@pbwt.com

From: Elizabeth Snow <esnow@selendygay.com>

Sent: Wednesday, September 27, 2023 12:12 PM

To: Long, Julia (x2878) <jlong@pbwt.com>; Sandick, Harry (x2723) <hsandick@pbwt.com>; Arrow, Sara (x2031) <sarrow@pbwt.com>; LoBiondo, George (x2008) <globiondo@pbwt.com>; Mangi, Adeel A. (x2563) <aamangi@pbwt.com>; ~jgreenbaum@sillscummis.com <jgreenbaum@sillscummis.com>; ~klieb@sillscummis.com <klieb@sillscummis.com>

Cc: Andrew Dunlap <adunlap@selendygay.com>; Meredith Nelson <mnelson@selendygay.com>; ~delsberg@selendygay.com <delsberg@selendygay.com>; Wohlforth, E. Evans <EWohlforth@rc.com>

Subject: JJHCS v. SaveOnSP (Case No. 2:22-cv-02632-ES-CLW)

Caution: External Email!

Counsel,

Please find attached a joint letter that SaveOnSP intends to file with the Court. We ask that you please provide JJHCS's portion by end of day Monday, October 2. We reserve the right to revise in response to any revisions.

Thanks,

Elizabeth

Elizabeth Snow

Associate [\[Email\]](#)

Selendy Gay Elsberg PLLC [\[Web\]](#)

Pronouns: she, her, hers

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Third, as to Savaria Harris and Jennifer De Camara, Judge Wolfson ordered that J&J add them as custodian and ordered that SaveOn propose a set of search terms to be run over their communications with third parties from January 1, 2021 through November 7, 2023. Tr. 54:12-23. SaveOn proposes these terms in Exhibit 5.

Exhibit 1

JJHCS v. SaveOnSP

Search Terms for Quinton Kinne, Daphne Longbothum, William Shontz, John Hoffman, Alison Barklage, and L.D. Platt
Case No. 2:22-cv-02632-JKS-CLW

Search Terms
“essential health benefit*” OR EHB* OR “non-essential health benefit” OR “nonessential health benefit*” OR NEHB*
(essential OR nonessential OR non-essential OR “non essential”) w/50 (“Affordable Care Act” OR ACA OR Obamacare)
“Save On” (case sensitive)
“save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR “Jody Miller” OR “Ron Krawczyk”
(“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
(Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
“other offer” W/5 (accumulat* OR maximiz*)
CAPa
CAPm
“adjustment program”
(CAPa OR CAPm OR “adjustment program”) AND (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp)
(“CAPa” OR “CAPm” OR “adjustment program”) AND “Save On” (<i>case sensitive</i>)

Exhibit 2

JJHCS v. SaveOnSP
Search Terms for Scott White
Case No. 2:22-cv-02632-JKS-CLW

Search Terms
“Save On” (case sensitive)
“save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP OR “Jody Miller” OR “Ron Krawczyk”
(“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
(Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
“CAPa” OR “CAPm” OR “adjustment program”
(STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)
(“TrialCard” OR “Trial Card” OR TC) AND ((statement* /5 work) OR “SOW*” OR contract*) AND (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR JCP OR “Savings Program” OR “WithMe” OR (with w/2 me))

Exhibit 3

JJHCS v. SaveOnSP
Search Terms for Blasine Penkowski
Case No. 2:22-cv-02632-JKS-CLW

Search Terms
“Save On” (case sensitive)
“save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP OR “Jody Miller” OR “Ron Krawczyk”
(“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
(Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
“CAPa” OR “CAPm” OR “adjustment program”
(STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)
(“TrialCard” OR “Trial Card” OR TC) AND ((statement* /5 work) OR “SOW*” OR contract*) AND (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR JCP OR “Savings Program” OR “WithMe” OR (with w/2 me))
(brand* OR finance* OR “SCG” OR (strategic /5 customer)) AND (accumulat* OR maximiz*)
((lose* OR loss* OR (return w/4 investment) OR “ROI” OR (negative w/5 impact) OR (gross w/5 impact) OR (net w/5 impact) OR (GTN w/5 impact)) w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe”)) AND (“Save On” OR SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP OR accumulat* OR maximiz*)
Budget* w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe” OR (with w/2 me))
(((\$20,000 OR 20k OR \$6,000 OR 6k) w/10 (set* OR chang* OR determin* OR adjust* OR increas* OR decreas*)) AND (Balversa OR Darzelex OR Faspro OR Erleada OR Imbruvica OR Opsumit OR Prezcobix OR Remicade OR Rybrevant OR Simponi OR Stelara OR Symtuza OR Tracleer OR Tremfya OR Uptravi OR Ventavis OR Zytiga)

Exhibit 4

JJHCS v. SaveOnSP
Search Terms for Karen Lade
Case No. 2:22-cv-02632-JKS-CLW

Search Terms
“Save On” (case sensitive)
“save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR “Jody Miller” OR “Ron Krawczyk”
(“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
(Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
“CAPa” OR “CAPm” OR “adjustment program”
(STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)
(((\$20,000 OR 20k OR \$6,000 OR 6k) w/10 (set* OR chang* OR determin* OR adjust* OR increas* OR decreas*)) AND (Balversa OR Darzelex OR Faspro OR Erleada OR Imbruvica OR Opsumit OR Prezcobix OR Remicade OR Rybrevant OR Simponi OR Stelara OR Symtuza OR Tracleer OR Tremfya OR Uptravi OR Ventavis OR Zytiga))
Budget* w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe” OR (with w/2 me))
“other offer” w/5 (accumulat* OR maximiz* OR “health plan*” OR insur*)
(accumulator /5 prog*)
PBM* AND (copay* or co-pay*) AND deductible
(Max* /15 benefit*) AND (\$20,000 OR \$20K OR 20k)

Exhibit 5

Search Terms for Savaria Harris & Jennifer De Camara
Case No. 2:22-cv-02632-JKS-CLW

Search Terms
“Save On” (case sensitive)
“save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR “Jody Miller” OR “Ron Krawczyk”
(“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
(Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
“other offer” W/5 (accumulat* OR maximiz* OR “health plan*” OR insur*)
(eligib* or ineligib*) AND “out-of-pocket cost”
(maximiz* OR optimiz*) AND (\$6,000 OR “maximum program benefit”)
(\$6,000 OR \$6k OR 6k OR \$9,100 OR \$8,900 OR (OOP) OR (out-of-pocket)) AND (Stelara OR Tremfya)
(Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program”) AND ((term* w/3 condition) OR “T&C” OR “TNC” OR “other offer”)
(“coupon*” OR “discount*” OR “prescription savings card*” OR “free trial*”) AND (accumulat* OR maximiz* OR “health plan*” OR insur* OR OR Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program” OR program)

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to Judge Wolfson to expand the scope of the November 7, 2023 Order. For the reasons discussed in JJHCS's opposition brief filed on February 14, SaveOnSP has no basis to relitigate the November 7, 2023 Order. For the avoidance of doubt, should Judge Wolfson expand the scope of the Court's November 7 Order with respect to the CAP search terms, JJHCS will adopt that application to the CAP custodians for the full time period as well.

As a compromise, JJHCS is prepared to run the following terms:

- SaveOnSP OR SaveOn OR "Save On SP" OR "Save OnSP" OR Save-On OR SOSP OR "Jody Miller" OR "Ron Krawczyk"
- "Save On" (*case sensitive*)
- "save on" w/50 (accumulat* OR maximiz* OR "essential health benefit*" OR EHB* OR "non-essential health benefit*" OR "nonessential health benefit*" OR NEHB* OR accredo OR ESI OR "express scripts")
- "other offer" W/5 (accumulat* OR maximiz*)
- ("Express Scripts" OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
- (Accredo OR Acredo) w/50 (accumulat* OR maximiz*)

However, JJHCS declines to run the following search terms, which have no relation to JJHCS's CAP-related efforts. Indeed, SaveOnSP acknowledged the lack of any connection during the parties' February 12, 2024 meet and confer, when SaveOnSP claimed these terms describe SaveOnSP's "business model." As SaveOnSP well knows, the Court did not direct further discovery on that issue.

- "essential health benefit*" OR EHB* OR "non-essential health benefit" OR "nonessential health benefit*" OR NEHB*
- (essential OR nonessential OR non-essential OR "non essential") w/50 ("Affordable Care Act" OR ACA OR Obamacare)

II. Scott White and Blasine Penkowski

SaveOnSP's letter also requests search terms to be added with respect to two apex custodians, Scott White and Blasine Penkowski. As to Mr. White and Ms. Penkowski, JJHCS agrees to run the following terms:

- SaveOnSP OR SaveOn OR "Save On SP" OR "Save OnSP" OR Save-On OR SOSP OR "Jody Miller" OR "Ron Krawczyk"
- "Save On" (*case sensitive*)

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- “save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
- (“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
- (Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
- (STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)

JJHCS declines to run the “CAP” search term over Mr. White’s and Ms. Penkowski’s documents without a SaveOnSP limiter, for the reasons previously discussed, but will agree to run the following search strings for the full April 1, 2016 to November 7, 2023 period consistent with the Court’s November 7 Order:

- (CAPa OR CAPm OR “adjustment program”) AND (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp)
- (“CAPa” OR “CAPm” OR “adjustment program”) AND “Save On” (*case sensitive*)

JJHCS also declines to run the following search terms over Mr. White’s and Ms. Penkowski’s documents, but will search for and produce final contracts and statements of work with Trial Card from non-custodial sources consistent with its January 29, 2024 responses and objections to SaveOnSP’s discovery requests:

- (“TrialCard” OR “Trial Card” OR TC) AND ((statement* /5 work) OR “SOW*” OR contract*) AND (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR JCP OR “Savings Program” OR “WithMe” OR (with w/2 me))

Finally, JJHCS declines to add certain proposed financial-related terms, which SaveOnSP requested only as to Ms. Penkowski’s documents. As outlined in JJHCS’s February 8, 2024 letter, and as discussed during the parties’ February 12, 2024 meet and confer, SaveOnSP’s insistence that JJHCS produce these documents is inconsistent with Judge Wolfson’s February 6, 2024 Order. For example, as to issues concerning CarePath’s budget, Judge Wolfson concluded that “[JJHCS] has the better argument” and “communications of budgetary decisions are not relevant to Defendant’s defenses or Plaintiff’s claims.” Dkt. No. 192 at 19. Similarly, as to issues related to return on investment (or “ROI”), Judge Wolfson unambiguously rejected SaveOnSP’s arguments, finding that JJHCS’s “alleged harm is not related to the profitability of any Janssen drugs. Put differently, even if J&J and its [affiliates] ultimately derive profits . . . from selling the drugs at issue, that fact does not disprove Plaintiff’s alleged harm in this case, either to itself or to the public.” *Id.* at 22.

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Accordingly, JJHCS will not run the following terms:

- (brand* OR finance* OR SCG OR (strategic w/5 customer)) AND (accumulat* OR maximiz*)
- ((lose* OR loss* OR (return w/4 investment) OR “ROI” OR (negative w/5 impact) OR (gross w/5 impact) OR (net w/5 impact) OR (GTN w/5 impact)) w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe”)) AND (“Save On” OR SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR accumulat* OR maximiz*)
- Budget* w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe” OR (with w/2 me))
- ((\$20,000 OR 20k OR \$6,000 OR 6k) w/10 (set* OR chang* OR determin* OR adjust* OR increas* OR decreas*)) AND (Balversa OR Darzelex OR Faspro OR Erleada OR Imbruvica OR Opsumit OR Prezcoibix OR Remicade OR Rybrevant OR Simponi OR Stelara OR Symtuza OR Tracleer OR Tremfya OR Upravi OR Ventavis OR Zytiga)

As discussed during the parties’ February 12, 2024 meet and confer, SaveOnSP’s proposal of these terms demonstrates that SaveOnSP refuses to accept the Court’s rulings on an issue already twice litigated—and on which JJHCS has twice prevailed. JJHCS will not provide hit counts for these searches, as they seek documents that are beyond the scope of what Judge Wolfson ordered. If SaveOnSP is willing to meet and confer in good-faith and to propose search terms related to the “small window” that Judge Wolfson opened with respect to budget and financials issues, JJHCS will run SaveOnSP’s requested search terms and provide hit counts, as appropriate. *See* Feb. 8, 2024 Ltr. From J. Long to E. Snow at 2-3.

III. Karen Lade

SaveOnSP proposed thirteen search terms with respect to Ms. Lade’s documents. JJHCS agrees to run the following search terms:

- SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR “Jody Miller” OR “Ron Krawczyk”
- “Save On” (*case sensitive*)
- “save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
- (“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)

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- (Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
- (STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)
- “other offer” w/5 (accumulat* OR maximiz* OR “health plan*” OR insur*)
- accumulator w/5 prog*

For the reasons cited above, JJHCS declines (1) to run the “CAP” search term over Ms. Lade’s documents without a SaveOnSP limiter; and (2) to run financial-related search strings over Ms. Lade’s documents.¹ As with Mr. White and Ms. Penkowski, JJHCS agrees to run the following terms with respect to the CAP program for the April 1, 2016 to November 7, 2023 time period:

- (CAPa OR CAPm OR “adjustment program”) AND (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp)
- (“CAPa” OR “CAPm” OR “adjustment program”) AND “Save On” (*case sensitive*)

As discussed at the parties’ February 12, 2024 meet and confer, JJHCS will consider running two final Lade-specific search strings if those are modified to capture the documents SaveOnSP explained it was seeking. JJHCS offers to run these modified terms, subject to SaveOnSP’s agreement that these strings resolve SaveOnSP’s requests with respect to these strings.

SaveOnSP Proposal	JJHCS Modification
PBM* AND (copay* or co-pay*) AND deductible	PBM* w/50 ((chang* OR increas* OR decreas*) AND (copay* OR co-pay*) AND deductible)

¹ JJHCS declines to run the following financial-related strings, which are beyond the scope of Judge Wolfson’s order:

- ((\$20,000 OR 20k OR \$6,000 OR 6k) w/10 (set* OR chang* OR determin* OR adjust* OR increas* OR decreas*)) AND (Balversa OR Darzelex OR Faspro OR Erleada OR Imbruvica OR Opsumit OR Prezcoibix OR Remicade OR Rybrevant OR Simponi OR Stelara OR Symtuza OR Tracleer OR Tremfya OR Upravi OR Ventavis OR Zytiga)
- Budget* w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe” OR (with w/2 me))

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(Max* /15 benefit*) AND (\$20,000 OR \$20K OR 20k)	(Max* /15 benefit*) w/50 ((chang* OR increas* OR decreas*) AND (\$20,000 OR \$20K OR 20k))
--	--

IV. Savaria Harris and Jennifer De Camara

Judge Wolfson ordered production from Ms. Harris and Ms. De Camara’s custodial files on a single, narrow issue: (1) documents and communications between the attorneys and any third-party entities **and** (2) that concern the “new terms and conditions for both its Stelara and Tremfya medications” implemented in January 2022. Dkt. No. 192 at 13-14. SaveOnSP’s requested terms go well beyond these limitations.

For example, SaveOnSP continues to insist on documents with any reference in which “coupon*” OR “discount*” OR “prescription savings card*” OR “free trial*” appear in the same document as the terms “Janssen” or “CarePath” (or variations thereof)—despite Judge Waldor explicitly rejecting that a narrower version of that term at the January 24, 2024 conference. Jan. 24 Tr. at 35:3-37:1 (“MR. SANDICK: Your Honor, Mr. Dunlap said a moment ago words to the effect of, we’re not looking for every time that somebody mentioned discount or coupon, but the search terms that they proposed even after Judge Waldor ordered them to narrow their request are exactly what Mr. Dunlap just said -- JUDGE WOLFSON: It’s not going to happen.”). Accordingly, JJHCS declines to run the following terms:

- (“coupon*” OR “discount*” OR “prescription savings card*” OR “free trial*”) AND (accumulat* OR maximiz* OR “health plan*” OR insur* OR OR Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program” OR program)
- (Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program”) AND ((term* w/3 condition) OR “T&C” OR “TNC” OR “other offer”)

For the same reason, JJHCS also declines to run the following terms, which are not designed to capture documents concerning the “new terms and conditions for both its Stelara and Tremfya medications”:

- Save On” (*case sensitive*)
- “save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
- SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR “Jody Miller” OR “Ron Krawczyk”

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- (“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
- (Accredo OR Acredo) w/50 (accumulat* OR maximiz*)

JJHCS agrees to the remainder of SaveOnSP’s proposed terms for the period proposed by SaveOnSP (January 1, 2021 to November 7, 2023), so long as those documents also mention Stelara and Tremfya (as modified in red font below):

- “other offer” W/5 (accumulat* OR maximiz* OR “health plan*” OR insur*) AND (Stelara OR Tremfya)
- (eligib* or ineligib*) AND “out-of-pocket cost” AND (Stelara OR Tremfya)
- (maximiz* OR optimiz*) AND (\$6,000 OR “maximum program benefit”) AND (Stelara OR Tremfya)
- (\$6,000 OR \$6k OR 6k OR \$9,100 OR \$8,900 OR (OOP) OR (out-of-pocket)) AND (Stelara OR Tremfya)

In addition, JJHCS will consider running the following terms for the period proposed by SaveOnSP (January 1, 2021 to November 7, 2023), subject to SaveOnSP’s agreement that these modifications will resolve SaveOnSP’s requests with respect to Ms. Harris and Ms. De Camara:

- (Stelara OR Tremfya) W/25 ((term* w/3 condition*) OR “T&C*” OR “other offer”))

* * *

JJHCS remains available to meet and confer with respect to SaveOnSP’s proposed search terms.

Very truly yours,

/s/ Julia Long
Julia Long

EXHIBITS 4-7
CONFIDENTIAL – FILED
UNDER SEAL



Elizabeth Snow
Associate
212 390 9330
esnow@selendygay.com

July 18, 2023

Via E-mail

George LoBiondo
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1133 Avenue of the Americas
New York, NY 10036
globiondo@pbwt.com

Re: *Johnson & Johnson Health Care Systems Inc. v. Save On SP, LLC* (Case No. 2:22-cv-02632-ES-CLW)

Dear George,

We write regarding deficiencies in JJHCS's document production.

I. Organizational Charts

A. Time Period

JJHCS's production does not appear to include organizational charts from before December 1, 2016. Please provide organizational charts covering the full time period from April 1, 2016 through December 1, 2016.

B. Juliette DeShaies

In the joint letter dated June 23, 2023, and in your letter dated May 19, 2023, you stated that Juliette DeShaies is an employee of JJHCS. *See* June 23, 2023 Joint Ltr. at 11. She does not appear on any organizational chart produced to date. Please produce all organizational charts on which she appears, whether from JJHCS or Janssen.

C. Groups in JJHCS's Organizational Charts

Please explain the function of the following groups named in JJHCS's organizational charts.

1. JCP One Platform

George LoBiondo
July 18, 2023

JJHCS's production shows that its assertion that Mr. Kinne's documents would be entirely duplicative and entirely privileged is false. For example, in JJHCS_00035757, [REDACTED]

JJHCS_00035757.

Similarly, JJHCS_00008989 [REDACTED]

By definition, Franz could not have been privy to those meetings.

Please confirm that JJHCS will add Mr. Kinne as a custodian.

JJHCS's production also reflects that Mr. Kinne is a member of something called the SMOX Team. JJHCS_00001196. Please explain the function of the SMOX team and provide the names of all its members, whether employed at JJHCS or Janssen or elsewhere in other J&J entities.

B. Leigh Wyszkowski

In its March 7, 2023 letter, SaveOnSP proposed Leigh Wyszkowski as a custodian because JJHCS named her as having identified or attempted to identify health plans advised by SaveOnSP or patients enrolled in the SaveOnSP program. In its March 16, 2023 letter, JJHCS asserted that her communications would be captured by other custodians, including John Paul Franz.

As noted above, JJHCS_00008989 [REDACTED]

[REDACTED] By definition, Franz could not have been privy to those meetings.

Please confirm that JJHCS will add Wyszkowski as a custodian.

C. Daphne Longbothum

In its June 23, 2023 joint letter, JJHCS asserted that Daphne Longbothum is solely an employee of JJHCS, *id.* at 10, and that all her relevant documents would be captured by Nidhi Saxena and Hattie McKelvey.

After a review of JJHCS's production, it is clear that Longbothum's documents are not completely captured by Saxena and McKelvey. For example, [REDACTED]

JJHCS_00001393, [REDACTED], JJHCS_00007876;

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JJHCS_00034500, [REDACTED], JJHCS_00034526. These demonstrate that Longbothum's documents are not coextensive with Saxena's and McKelvey's documents.

Please confirm that JJHCS will add Longbothum as a custodian.

D. William Shontz

In its June 23, 2023 joint letter, JJHCS asserted that William Shontz is an employee of JJHCS, *id.* at 11, and that all his relevant documents would be captured by Hattie McKelvey and Silviya McCool.

After a review of JJHCS's production, it is clear that Shontz's documents are not completely captured by McKelvey and McCool. JJHCS_00001202 [REDACTED]

[REDACTED] And many emails include Shontz but neither McKelvey or McCool. *See, e.g.*, JJHCS_0005897 (email from Mr. Robinson to Mr. Shontz stating [REDACTED]); JJHCS_00008556 (emails with Thomas J. Paul and Trial Card regarding the CarePath website); JJHCS_00034500 (email from Thomas J. Paul regarding the CAP program website design); JJHCS_00034531 (emails regarding the ERLEADA CAP program). These demonstrate that Shontz's documents are not coextensive with McKelvey's and McCool's documents.

Please confirm that JJHCS will add Mr. Shontz as a custodian.

E. Alison Barklage

SaveOnSP requests that JJHCS add Alison Barklage as a custodian. Barklage appears to be the person implementing the CAP programs for Janssen's oncology and pulmonary health divisions. JJHCS_00118794. Barklage was privy to an assortment of CAP-related PowerPoint presentations circulated throughout J&J. *See, e.g.*, JJHCS_00069175 (Barklage sending CarePath Introduction slides approved by Janssen's Cardiovascular & Metabolism division); JJHCS_00084681 (Barklage sending a PowerPoint of [REDACTED] which will be used at a JALT meeting); JJHCS_00038647 ([REDACTED]); JJHCS_00029668 (Barklage receiving a copy of [REDACTED]); JJHCS_00038575 ([REDACTED]); JJHCS_00084507 ([REDACTED]). Barklage also received a copy of the IPBC SaveOnSP Training video. JJHCS_00001206. Her work thus concerns JJHCS's response to SaveOnSP and is directly relevant to JJHCS's claims and SaveOnSP's defenses in this action.

Please confirm that JJHCS will add Ms. Barklage as a custodian.

George LoBiondo
July 18, 2023

III. Search Terms

First, in its March 16, 2023 letter, JJHCS refused to remove the limitation for (accumulate* OR maximiz*) within 50 words of Express Scripts (and permutations) and Accredo (and permutations). JJHCS's proposal improperly limits its searches. JJHCS has agreed to produce "all non-privileged documents and communications in its possession relating to the extent of the harm SaveOnSP has caused JJHCS during the relevant Time Period." Feb. 14, 2023 Ltr. from A. LoMonaco to M. Nelson at 1-2. The purported harm caused by SaveOnSP may be described in ways that do not explicitly refer to SaveOnSP (or a permutation); JJHCS's productions reflect that it often referred to SaveOnSP as a program created by ESI or ESI's SP. *See* JJHCS_00026405; JJHCS_00000641.

To resolve this issue, SaveOnSP proposes that JJHCS use these terms:

- ("Express Scripts" OR ESI OR ExpressScripts) w/50 (accumulate* OR maximiz* OR copay* OR co-pay* OR coins* OR co-ins* OR "cost share")
- (Accredo OR Acredo) w/50 (accumulate* OR maximiz* OR copay* OR co-pay* OR coins* OR co-ins* OR "cost share")

Please confirm that JJHCS will add these search terms. If JJHCS objects to either term on burden grounds, please provide the number of unique documents returned by that term.

Second, JJHCS agreed to produce all non-privileged documents and communications regarding its understanding of commercial health plans' ability to designate specialty drugs as EHB or NEHB under the ACA and its regulations during the relevant time period. While JJHCS agreed to run a proposed term regarding EHB and NEHB, the following additional term is required to capture the full universe of relevant documents JJHCS agreed to produce: (CarePath OR "Care Path" OR CP OR JCP OR "Savings Program") /100 (ACA OR "Affordable Care Act" OR Obamacare). Please confirm that JJHCS will add this search term. If JJHCS objects to the term on burden grounds, please provide the number of unique documents returned by that term.

Third, JJHCS rejected the following search terms:

- "copay assistance" w/10 program
- (CarePath OR "Care Path" OR CP OR JCP OR "Savings Program") AND (patient w/20 (copay or payment or contrib*)) pay* w/100 (patient w/10 ("high deduc") OR "high-deduc" OR "health savings" OR HSA)
- Copay w/5 accumulate*
- Copay w/5 max*

* * *



Elizabeth Snow
Associate
212 390 9330
esnow@selendygay.com

August 28, 2023

Via E-mail

Julia Haigney Long
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036
jhaigneylong@pbwt.com

Re: *Johnson & Johnson Health Care Systems Inc. v. Save On SP, LLC* (Case No. 2:22-cv-02632-JMV-CLW)

Dear Julia,

SaveOnSP writes to ask that JJHCS add the individuals identified below as custodians. Some requests are new; others follow up on prior requests.

If JJHCS objects to adding any individual on the ground that doing so would be unduly burdensome or that their documents would be duplicative or cumulative of those of another custodian, please provide hit counts of how many unique, relevant documents would be identified for that individual by each of the terms that JJHCS has agreed to run or that SaveOnSP has moved the Court for it to run on its existing custodians. *See Steven Madden, Ltd. v. Jasmin Larian, LLC*, 2019 WL 3940112, at *2 (S.D.N.Y. July 8, 2019) (finding vague assertions that proposed custodians' document would be duplicative "unsupported by evidence and meritless").

A. Quinton Kinne

SaveOnSP asks that JJHCS add Quinton Kinne as a custodian. SaveOnSP first made this request in its March 7, 2023 letter. In its July 28, 2023 letter, JJHCS offered to add Kinne as a custodian if SaveOnSP would add Ayesha Zulqarnain and drop all other requests for other custodians; SaveOnSP added Zulquarnain but did not agree to forego all other custodian requests.

Kinne is relevant to this litigation: (1) JJHCS identified Mr. Kinne as (a) having identified or attempted to identify health plans advised by SaveOnSP or patients enrolled in such plans; and (b) having responsibility for monitoring and

C. Juliette Deshaies

Deshaies is relevant to this litigation. Per LinkedIn, she was the Group Product Director of the ERLEADA Patient Experience. Juliette Deshaies, LINKEDIN, <https://www.linkedin.com/in/juliette-deshaies-1132b44> (last visited May 9, 2023). As JJHCS represented to the Court, Deshaies worked on the marketing of multiple Janssen Drugs at issue, June 23, 2023 Joint Ltr. at 11, ECF No. 127 (Deshaies’s “primary responsibilities related to the marketing of Simponi Aria, Stelara, and Tremfya”).

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Deshaies was also involved in deciding whether JJHCS would establish a copay adjustment program (CAP) for Erleada: (1) [REDACTED]

[REDACTED], JJHCS_00083836; *see also* JJHCS_00083838; (2) she was sent (not just cc'ed) an email regarding a [REDACTED], JJHCS_00083826, and [REDACTED]

Deshaies is likely to have unique documents. In its May 19, 2023 letter, JJHCS asserts that her documents would be cumulative of those in the files of custodians Spilios Asimakopoulos, Heith Jeffcoat, and Lynn Hall. Discovery shows otherwise: (1) Deshaies received an email from McCann regarding [REDACTED], JJHCS_00069842—indicating that she has unique documents regarding the offering of CarePath for Stelara; (2) she had a call with Alison Barklage without any current custodians regarding [REDACTED], *see, e.g.*, JJHCS_00104243—indicating she has unique documents regarding the offering of CarePath for Stelara.

D. Leigh Wyszkowski

SaveOnSP asks that JJHCS add Leigh Wyszkowski as a custodian. SaveOnSP first made this request in its March 7, 2023 letter.

Wyszkowski is relevant to this litigation: (1) she is the Director of Fee for Service (FFS) Execution & Cut Supplier Management as part of the Strategic Customer Groups, JJHCS_00000346; (2) [REDACTED], JJHCS_00026553; (3) [REDACTED], JJHCS_00000551—the other was an employee of KPMG, [REDACTED], JJHCS_00000641 (copying Ms. Wyszkowski); and (4) she assisted Franz in reviewing an employee, JJHCS_00000553, [REDACTED], JJHCS_00000645—indicating that she worked on and/or had knowledge of that response.

Wyszkowski is likely to have unique documents. In its March 16, 2023 letter, JJHCS asserted that her communications would be captured by other custodians, including Franz. Discovery shows otherwise: (1) she attended a one-on-one with Kinne regarding SaveOnSP that, by definition, Franz did not, JJHCS_00008989; (2) Franz stated that [REDACTED], JJHCS_00010064—indicating that Wyszkowski worked on aspects of CarePath without Franz's direct involvement.

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custodians, JJHCS_00005897; JJHCS_00034500; JJHCS_00034561; JJHCS_00034602—indicating that he received relevant communications directly; (2) he appears on an email regarding [REDACTED], JJHCS_00044011 (later forwarded to a custodian); (3) Shontz apparently gave an approval regarding [REDACTED], JJHCS_00030136—indicating that he either had independent approval authority or the authority to act in McCool’s stead; (4) when McCool was out of the office, she directed people to reach out to Shontz, JJHCS_00001202, and later emails in that thread do not include McCool or McKelvey; and (5) many emails include Shontz but neither McKelvey or McCool, *see, e.g.*, JJHCS_00005897 (email from Mr. Robinson to Mr. Shontz stating [REDACTED]); JJHCS_00008556 (emails with Thomas J. Paul and Trial Card regarding the CarePath website).

F. Alison Barklage

SaveOnSP asks that JJHCS add Alison Barklage as a custodian. SaveOnSP first made this request in its July 18, 2023 letter.

Barklage is relevant to this litigation. While JJHCS asserted in its July 28, 2023 letter that she was a “JJHCS contractor during the relevant period with administrative responsibilities,” LinkedIn states that from 2004 to 2007 she was a Consulting Director at Johnson & Johnson and from 2011 to the present has been the President of AKB Consulting (her own company), in which she “delivers change & project management consulting for large pharmaceutical companies” and “support[s] senior stakeholders with project management on critical business initiatives, including issue identification, stakeholder engagement & communications, project planning, dashboard status reporting, and success measurement plans.”¹

Discovery confirms that her work for JJHCS was substantive: (1) she sent an email regarding [REDACTED], JJHCS_00084174; *see also* JJHCS_00084176, (2) in many instances, Heith Jeffcoat asked for her feedback on relevant presentations, including about the CAP program, JJHCS_00084504; JJHCS_00084426; JJHCS_00084507; (3) she asked Jeffcoat for his thoughts on

¹ Alison Barklage, MHSA, LINKEDIN, https://www.linkedin.com/in/alison-barklage?challengeId=AQFbgDDvMikQdAAAYotJLka16VvflHioohPKqHkyHQq8-x8kcseu4DpAyvTdJVIQsroEHO_irv6te5zBl4ZpmiokUGq-gnyfw&submissionId=a11fb285-55a7-7e17-f8f8-22be33e1a736&challengeSource=AgEdBx4PytP1swAAAYotJO8HtPee3A-dt2H1mjjKjMQQi7fuI_H-PqNqfXcY7m8&challengeType=AgEEI2s1TqMI3QAAAYotJO8LI_gIY5uJoJ4qMy9wQdzaZGx4qhGD2YI&memberId=AgGbLaHzLoTyeAAAYotJO8OUy_dh7q02DhaOAmYeVtVWiY&recognizeDevice=AgFf9b5VuiQntgAAAYotJO8SLSPSWYDoDv5BdP2y1X2lUqTey2kg (last visited Aug. 25, 2023).

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[REDACTED]
[REDACTED] JJHCS_00084681—indicating that she was substantively involved in the decision-making process; (4) she called a meeting regarding [REDACTED]

[REDACTED] JJHCS_00117387—indicating that she was driving discussions regarding cost support (e.g., CarePath); and (5) she told others that she was working with Minecci regarding [REDACTED]
[REDACTED], JJHCS_00060430.

Barklage is likely to have unique documents. In its July 28, 2023 letter, JJHCS asserted that her files would be captured by Jeffcoat's documents. Discovery shows otherwise: (1) she was the only sender of an email to Jeffcoat regarding

[REDACTED], JJHCS_00084681—indicating she has unique information about CarePath's enrollment; (2) she is part of a series of emails about [REDACTED]

[REDACTED], JJHCS_00069171—indicating she has unique information about the offering of CarePath for Darzalex; and (3) she sent a presentation that [REDACTED]

[REDACTED], JJHCS_00069174—indicating that she has unique information regarding JJHCS's communication efforts regarding CarePath.

G. Blasine Penkowski

SaveOnSP requests that JJHCS add Ms. Penkowski as a custodian.

Penkowski is relevant to this litigation: (1) she serves as the Chief Strategic Customer Officer of JJHCS,² see JJHCS_00000106; (2) [REDACTED]
[REDACTED], JJHCS_00101641 (scheduling a meeting to [REDACTED]
[REDACTED]); JJHCS_00084221 (discussing how SaveOnSP works and revealing [REDACTED]
[REDACTED]); JJHCS_00101570 (sending Penkowski [REDACTED])

² In the June 23, 2023 joint letter, JJHCS indicated that Penkowski and Scott White were immune from discovery under the apex doctrine. In fact, “the ‘apex doctrine,’ while it may be applicable to depositions, is not a protective shield that prohibits document discovery from high-ranking executives.” *Sandoz, Inc. v. United Therapeutics Corp.*, 2020 WL 13830525, at *3 (D.N.J. Nov. 16, 2020) (citing *Nat’l Labor Relations Bd v. 710 Long Ridge Rd Operating Co. II, LLC*, 2020 WL3026523 at *2 (D.N.J. June 5, 2020)).

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); (3) Penkowski called a meeting regarding [REDACTED]
[REDACTED], JJHCS_00083216; and (4) [REDACTED]
[REDACTED], see JJHCS_00001830; JJHCS_00001668 (an individual named Karan
Dhundia [REDACTED]).

Penkowski is likely to have unique documents. In the June 23, 2023 joint letter, JJHCS asserted that her files would be captured by those belonging to Katie Mazuk. Discovery shows otherwise: (1) Penkowski appears on many relevant email threads without Mazuk, see JJHCS_00027236 ([REDACTED]
[REDACTED]); JJHCS_00026852 (Penkowski remained part of those discussions in December 2017); (2) [REDACTED]
[REDACTED], JJHCS_00026519, and *2022 Economic Report on U.S. Pharmacies and Pharmacy Benefit Managers* by Adam Fein, JJHCS_00074697—indicating that She directly received unique information about SaveOnSP and other entities that JJHCS deems to be maximizers; (3) she signed many contracts with TrialCard outlining TrialCard’s duties for JJHCS in relation to CarePath, JJHCS_00025908; JJHCS_00025517 (showing modification by Ms. Penkowski, but not Ms. Mazuk); JJHCS_00025532 (same); JJHCS_00024511 (same); JJHCS_00025594 (same)—indicating that she has unique information about JJHCS’s relationship with TrialCard.

H. Scott White

SaveOnSP requests that JJHCS add Mr. White as a custodian.

White is relevant to this litigation: (1) he is a member of JALT and serves as the Company Group Chairman for North America Pharmaceuticals Johnson & Johnson, see JJHCS_00001542; (2) White was forwarded [REDACTED]
[REDACTED], JJHCS_00001704; (3) [REDACTED], see, e.g., JJHCS_00011154 (a December 17, 2021 meeting with the subject [REDACTED]
[REDACTED]); JJHCS_00041213 ([REDACTED]); and (4) [REDACTED]
[REDACTED] see JJHCS_00001830; JJHCS_00001668 ([REDACTED]).

White is likely to have unique documents. In its June 23, 2023 joint letter, JJHCS asserted that his files would be captured by Mazuk’s documents. Discovery

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shows otherwise: (1) [REDACTED], JJHCS_00100210, *see also* JJHCS_00100213 ([REDACTED])—indicating [REDACTED]; (2) he signed work orders and change orders with TrialCard, JJHCS_00039767; JJHCS_00039772; JJHCS_00039696; JJHCS_00039374; JJHCS_00039378; JJHCS_00039382; JJHCS_00039625; JJHCS_00039879—indicating that he has unique information about JJHCS’s relationship with TrialCard.

I. Karen Lade

SaveOnSP requests that JJHCS add Karen Lade as a custodian.

Lade is relevant to this litigation. She appears to be a Product Director, Integrated Customer Solution, Patient Affordability Strategy at Janssen Immunology,³ JJHCS_00002688. She performed significant work related to CarePath:

(1) [REDACTED] JJHCS_00083183; *see also* JJHCS_00083894 (sharing [REDACTED]); (2) she was asked to send custodian Spilios Asimakopoulos [REDACTED] JJHCS_00083180—indicating that she was deeply involved with CarePath’s role; (3) she worked on [REDACTED], JJHCS_00105296; and (4) she provided [REDACTED], JJHCS_00045468.

Lade is likely to have unique documents. In the June 23, 2023 joint letter, JJHCS asserted that she was not likely to have unique documents because she simply provided information about CarePath to other JJHCS personnel. Discovery shows otherwise: (1) Lade sent emails regarding CarePath in 2016 to Jeffcoat, attaching other emails regarding CarePath with no custodian as a party. JJHCS_00083929 (attaching JJHCS_00083930); (2) she sent emails regarding [REDACTED], JJHCS_00083930—indicating that she has unique information about those goals; and (3) she is listed [REDACTED], JJHCS_00083931; *see also* JJHCS_00083932 (same)—indicating that she has unique information about questions from those representatives involving CarePath.

J. L.D. Platt

SaveOnSP asks that JJHCS add L.D. Platt as a custodian. He is relevant to this litigation: (1) JJHCS identified him as an individual who provided input on communications related to this Action,” July 28, 2023 JJHCS Suppl. Resps. to SaveOnSP’s First Interrogatories at 12, and he has emailed with JJHCS’s lawyers

³ Ms. Lade does not appear on any organizational chart produced to date by JJHCS.

K. Ernie Knewitz

L. Silas Martin

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M. John Hoffman

SaveOnSP asks that JJHCS add John Hoffman as a custodian. He is relevant to this litigation: (1) JJHCS identified him as a person who had responsibility for JJHCS's understanding of the terms 'copay accumulator' and 'copay maximizer,'" July 28, 2023 JJHCS Suppl. Resps. to SaveOnSP's First Interrogatories at 23-24; (2) per LinkedIn, as the former head of Health Policy & Advocacy at Johnson & Johnson, he "help[ed] to enact state legislation prohibiting non-medical switching and copay accumulator and maximizer programs";⁴ and (3) [REDACTED]

[REDACTED], JJHCS_00027236; JJHCS_00026852; (4)

[REDACTED], JJHCS_00101570; (5)

[REDACTED], JJHCS_00100210; JJHCS_00126949; and (6) [REDACTED]
[REDACTED], JJHCS_00114446.

* * *

We request a response by September 5, 2023.

We reserve all rights and are available to meet and confer.

Best,

/s/ Elizabeth Snow

Elizabeth H. Snow
Associate

⁴ John Hoffman, LINKEDIN, https://www.linkedin.com/in/john-hoffman-b788147?challengeId=AQHlg4eOVL86lAAAYovUZQ9SsGyvdo2HYtutCig6Xv1wLmAESYeJIZNNUm5tj_f3xXdkNRIsO2pKckOxXoyNv2iDuWS_CHTJA&submissionId=8oad3273-86c8-7e17-a1fe-77f347742717&challengeSource=AgH1X6LAia67HwAAAYovU4AHBhdazZxe-czPqZAJov21oKYm5wu7ZSjcwBLBnKw&challengeType=AgGRK-8FFEdBJgAAAYovU4AJHwvS8UwxYtNjfsJqMYjqd1mPyaC3LvM&memberId=AgGo7hRMgBgeJAAAAAYovU4AMGQyolcdLCH7f9bLEylRddVo&recognizeDevice=AgGseyLBaGE6qAAAAAYovU4APYASa3jZyEgK9oMKGoBoiwT_Pf69U (last visited Aug. 25, 2023)